

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DAVID FREEMAN,

Petitioner,

v.

RICHARD F. ALLEN,
Commissioner of the Alabama
Department of Corrections,

Respondent.

Civil Action Number
2:06CV122-MHT-WC

MOTION FOR ENLARGEMENT OF TIME

Comes now Respondent, by and through Troy King, the Attorney General of the State of Alabama, and on behalf of Respondent Richard Allen, respectfully moves this Honorable Court for an enlargement of sixty (60) days, until March 19, 2007, within which to file his procedural default brief. As grounds in support of this motion, Respondent offers the following:

1. Lead counsel for Respondent in this matter, Cheryl Ann Schuetze, is on indefinite medical leave. On Tuesday January 9, 2007, Ms. Scheutze advised the Alabama Attorney General's Office that she could not return to work until today, Tuesday, January 16, 2007. Ms. Schuetze did not return to

work today, but instead extended her leave indefinitely, subject to the limitations of the Family and Medical Leave Act. Though doubtless this Court would prefer more information, unfortunately, undersigned counsel has no knowledge of the nature or severity of the medical condition.

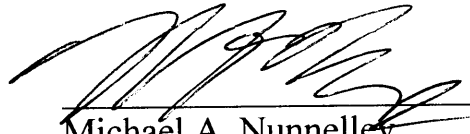
2. Undersigned Counsel was assigned this case only today, and contemporaneously files his notice of appearance. Undersigned counsel has been unable to find any draft of the brief that is due to this Court, and Ms. Scheutze has been unavailable for guidance.
3. This is a federal habeas corpus petition challenging Smith's capital murder conviction and sentence of death. Undersigned counsel, having taken no part in the case until this day, needs time to review the petition, record, and answer, in accordance with his professional obligations, in order to prepare Respondent's brief.
3. Undersigned counsel also represents the State in 20 other capital murder trials, direct appeals, and post-conviction proceedings. Notable among these cases are the following:

- i. James Allen Harrison, (CR-05-2411), in which the undersigned counsel must file a brief before the Alabama Court of Criminal Appeals on or before January 19, 2007.
 - ii. Harvey Lee Windsor, (CR-04-0711), in which the undersigned counsel must file a brief before the Alabama Court of Criminal Appeals on or before January 23, 2007.
 - iii. Darryl Dewayne Turner, (CC 99-318.60), in which undersigned counsel must file the States answer to Turner's Rule 32 petition on or before February 1, 2007.
 - iv. Thomas D. Arthur, (USSCT #), in which the undersigned counsel must file a brief in opposition to the petition for certiorari on or before February 10, 2006.
4. Counsel for the State will be unable to prepare an adequate brief by this Court's deadline. Counsel needs an additional sixty (60) days to prepare an adequate procedural default brief.
5. The interests of justice and fairness and this Court's judicial function will best be served by granting the requested enlargement. Likewise, Freeman will not be prejudiced if the request for enlargement is granted.

WHEREFORE, for the foregoing reasons, Respondent moves this Court for an enlargement of sixty (60) days within which to file its procedural default brief, thus making the State's Answer due on or before March 19, 2007.

Respectfully submitted,

Troy King
Attorney General



Michael A. Nunnelley
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2007, a copy of the foregoing
was served by placing the same in the United States mail, first class
postage prepaid, and addressed as follows:

Keir M. Weyble
Blume & Weyble, LLC
P. O. Box 11744
Columbia, SC 29211

Christopher Seeds
P. O. Box 6725
New York, NY 10150

Robin C. Konrad, Samuel A. Walker
Federal Defenders
Middle District of Alabama
201 Monroe Street, Suite 407
Montgomery, AL 36104

A handwritten signature in black ink, appearing to read 'Michael A. Nunnelley', written over a horizontal line.

Michael A. Nunnelley
Assistant Attorney General

Address of Counsel:

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